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City and County of San Francisco

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In re:

PG&E CORPORATION,

-and-

PACIFIC GAS & ELECTRIC COMPANY,

Debtors,

- ☐ Affects PG&E Corporation  
☒ Affects Pacific Gas and Electric Company  
☐ Affects both Debtors

*All papers shall be filed in the Lead Case,  
No. 19-30088 (DM)*

Case No.: 19-30088-DM

Chapter 11

**DECLARATION OF KATHARINE M.  
MAPES IN SUPPORT OF MOTION BY  
THE CITY AND COUNTY OF SAN  
FRANCISCO FOR DETERMINATION  
THAT AUTOMATIC STAY DOES NOT  
APPLY UNDER §362(b)(4) OR IN THE  
ALTERNATIVE, FOR RELIEF FROM  
THE AUTOMATIC STAY UNDER  
§362(d)(1) BY THE CITY AND  
COUNTY OF SAN FRANCISCO**

DATE: May 9, 2019  
TIME: 9:30 a.m.  
PLACE: Courtroom 17  
450 Golden Gate Avenue  
16th Floor  
San Francisco, California  
JUDGE: Hon. Dennis Montali

I, Katharine M. Mapes, declare:

1           1.       I am a partner at the firm of Spiegel & McDiarmid, LLP, in Washington, D.C.  
2 Spiegel & McDiarmid has served as outside counsel to the City and County of San Francisco (“San  
3 Francisco” or “City”) with respect to its disputes with the Pacific Gas and Electric Company  
4 (“PG&E”) before the Federal Energy Regulatory Commission (“FERC”) that are described in this  
5 declaration. Accordingly, I am familiar with the procedural history and posture of San Francisco’s  
6 pending complaints against PG&E at FERC, as well as other ongoing cases involving PG&E and San  
7 Francisco at FERC. The pending matters described in this declaration all concern PG&E’s provision  
8 of service under the Wholesale Distribution Tariff (“WDT”).<sup>1</sup> The following facts are known to me  
9 personally and, if called upon as a witness, I would testify as to them competently.

10           2.       San Francisco and PG&E have competed to serve customers within the City for nearly  
11 a century. PG&E does so pursuant to a 1939 franchise agreement with the City. The City does so  
12 under authority granted to it in the State of California Constitution (art. XI, § 9), the Federal Raker  
13 Act of 1913 (Pub. L. No. 63-41, 38 Stat. 242), and the San Francisco Charter (§§ 4.112, 8B.120-127,  
14 16.101).

15           3.       FERC has an obligation to ensure that tariffs on file are just, reasonable, and not  
16 unduly discriminatory against one customer or another. This obligation is found within the Federal  
17 Power Act, which FERC administers.<sup>2</sup> FERC has stated that it has a “statutory obligation under  
18 sections 205 and 206 of the Federal Power Act (FPA) to remedy undue discrimination.”<sup>3</sup> For  
19 \_\_\_\_\_

20 <sup>1</sup> A copy of PG&E’s Wholesale Distribution Tariff (without attachments not relevant here) is attached  
21 hereto as Exhibit A. The full version of the WDT, with all attachments, is available at FERC’s  
22 “eTariff” website (<https://etariff.ferc.gov/TariffBrowser.aspx?tid=4084>) and at  
23 [https://www.pge.com/pge\\_global/common/pdfs/about-pge/company-information/regulation/contracts-and-tariffs/wd-tariff.pdf](https://www.pge.com/pge_global/common/pdfs/about-pge/company-information/regulation/contracts-and-tariffs/wd-tariff.pdf). The most recent changes to PG&E’s WDT were approved by FERC in  
24 *Pacific Gas & Elec. Co.*, 152 FERC ¶ 61,010 (2015).

25 <sup>2</sup> 16 U.S.C. §§ 824d, 824e.

26 <sup>3</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission*  
27 *Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*,  
28 Order No. 888, 61 Fed. Reg. 21,539, 21,541 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036, at 31,635  
(1996) (“Order 888”), *clarified*, 76 FERC ¶ 61,009 (1996), *modified*, Order No. 888-A, 62 Fed. Reg.  
12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh’g*, Order No. 888-B, 62  
Fed. Reg. 64,688 (Dec. 9, 1997), 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82  
FERC ¶ 61,046 (1998), *aff’d in part and remanded in part sub nom. Transmission Access Policy*  
*Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1

1 example, under Section 206 of the Federal Power Act (16 U.S.C. § 824e), FERC shall, “after a  
2 hearing held upon its own motion or upon complaint,” “determine the just and reasonable rate, charge,  
3 classification, rule, regulation, practice, or contract” whenever FERC has found “that any rate, charge,  
4 or classification, demanded, observed, charged or collected by any public utility for any transmission  
5 or sale subject to [its] jurisdiction,” “is unjust, unreasonable, unduly discriminatory or preferential.”<sup>4</sup>

6 4. Because PG&E is a FERC-jurisdictional public utility, it must file tariffs like its  
7 Wholesale Distribution Tariff with FERC.<sup>5</sup>

8 5. PG&E first filed the Wholesale Distribution Tariff with FERC in 1997.<sup>6</sup> PG&E, along  
9 with the other investor-owned utilities in California, filed wholesale distribution tariffs with FERC as  
10 part of their implementation of California’s electric industry restructuring.<sup>7</sup>

11 6. When PG&E submitted its most recent Wholesale Distribution Tariff rate case to  
12 FERC in FERC Docket No. ER13-1188, it stated that the Wholesale Distribution Tariff “was designed  
13 to provide eligible wholesale customers interconnected to PG&E’s distribution system with open-  
14 access, non-discriminatory service necessary to reach the CAISO-controlled grid to make wholesale  
15 sales and purchases.”<sup>8</sup> PG&E also stated that the Wholesale Distribution Tariff “is based on

16  
17 (2002).

18 <sup>4</sup> 16 U.S.C. § 824e(a).

19 <sup>5</sup> 16 U.S.C. § 824(e) (defining “public utility” as “any person who owns or operates facilities subject  
20 to the jurisdiction of the [Federal Energy Regulatory] Commission under this subchapter,” with  
21 exception for facilities subject to such jurisdiction solely under certain provisions of the Federal  
22 Power Act); 16 U.S.C. § 824d(c) (requiring that “every public utility shall file with the [Federal  
23 Energy Regulatory] Commission . . . and shall keep open in convenient form and place for public  
inspection schedules showing all rates and charges for any transmission or sale subject to the  
jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates  
and charges, together with all contracts which in any manner affect or relate to such rates, charges,  
classifications, and services”).

24 <sup>6</sup> Pac. Gas & Elec. Co., ISO Cost of Service Filing 1, *Pac. Gas & Elec. Co.*, FERC Docket No. ER97-  
25 2358-000 (Mar. 31, 1997), eLibrary No. 19970407-0088.

26 <sup>7</sup> *Id.* (filing PG&E’s Wholesale Distribution Tariff for FERC approval and explaining that “[t]he filing  
is being made to implement the State of California’s restructuring objectives . . . codified in California  
27 Assembly Bill 1890”).

28 <sup>8</sup> Pac. Gas & Elec. Co., Proposed Rate and Non-rate Changes to the Wholesale Distribution Tariff,  
FERC Electric Tariff Volume No. 4 and Related Service Agreements for Wholesale Distribution  
Service 2, *Pac. Gas & Elec. Co.*, FERC Docket No. ER13-1188-000 (Mar. 29, 2013), eLibrary

1 [FERC's] Order No. 888-A Open Access Transmission Tariff"<sup>9</sup>—the standardized tariff containing  
2 minimum terms and conditions of non-discriminatory transmission service that FERC issued in a  
3 rulemaking and required all public utility transmission owners to file with FERC.<sup>10</sup>

4 7. The Wholesale Distribution Tariff is a tariff of general applicability. That means that  
5 any entity that falls within the Tariff's definition of "Eligible Customer" has the right to request and  
6 receive wholesale distribution service from PG&E under the standard set of terms and conditions  
7 spelled out in the Tariff.<sup>11</sup> PG&E and San Francisco agree that San Francisco is an Eligible Customer  
8 under the Wholesale Distribution Tariff.<sup>12</sup> The Tariff's standard terms and conditions include the  
9 prices charged by PG&E for wholesale distribution service, as well as the physical requirements for  
10 interconnection and conditions such as how service may be terminated.

11 8. For decades, San Francisco had taken service over PG&E's distribution system  
12 pursuant to a series of bilateral agreements with PG&E, the most recent of which terminated on  
13 June 30, 2015.<sup>13</sup> San Francisco began taking extensive service under PG&E's Wholesale Distribution  
14 Tariff on July 1, 2015 (prior to that it took very limited service under the Tariff).<sup>14</sup>

15 9. San Francisco has filed complaints with FERC and participated in proceedings related  
16 to rate filings made by PG&E at FERC regarding the Wholesale Distribution Tariff. In those  
17 proceedings, San Francisco argues that PG&E has failed, and continues to fail, to provide  
18 San Francisco with wholesale distribution service that is consistent with the terms and conditions  
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20 No. 20130329-5091.

21 <sup>9</sup> *Id.*

22 <sup>10</sup> *See* Order 888. The Commission's pro forma Open Access Transmission Tariff covers transmission  
23 facilities, but not local distribution facilities. Accordingly, PG&E's separate Wholesale Distribution  
24 Tariff was needed to extend non-discriminatory open access to PG&E's distribution system.

25 <sup>11</sup> Att. A, WDT § 2.12 ("Distribution Customer"), 2.16 ("Eligible Customer"), 13.1 ("General  
26 Conditions" of "Service Availability").

27 <sup>12</sup> Pac. Gas & Elec. Co., Explanatory Statement in Support of Offer of Settlement 4, *Pac. Gas & Elec.*  
28 Co., FERC Docket No. ER13-1188-037 (Mar. 31, 2015), eLibrary No. 20150331-5502.

<sup>13</sup> *City & Cty. of S.F. v. Pac. Gas & Elec. Co.*, 150 FERC ¶ 61,255, PP 9, 59, Ordering Paragraph A  
(2015).

<sup>14</sup> *Id.* PP 3-5.

1 required by the FERC-approved Wholesale Distribution Tariff and the Federal Power Act. These  
2 disputes can be generally grouped into three categories.

3 10. First, there is a set of consolidated FERC proceedings dating back to 2014 regarding  
4 San Francisco's transition from service pursuant to bilateral agreements with PG&E to service under  
5 PG&E's Wholesale Distribution Tariff.<sup>15</sup> In 2013, San Francisco submitted an application to PG&E  
6 to transfer all loads then being served under bilateral agreement to Wholesale Distribution Tariff  
7 service. In response, PG&E claimed that the majority of San Francisco's delivery points were not  
8 eligible for Wholesale Distribution Tariff service. In 2014, San Francisco filed a complaint with  
9 FERC under Section 206 and 306 of the Federal Power Act seeking Wholesale Distribution Tariff  
10 service for all of its delivery points. A few months later, PG&E filed unexecuted service agreements  
11 with FERC under Section 205 of the Federal Power Act, under which it proposed to provide  
12 Wholesale Distribution Tariff service to only certain of San Francisco's loads. PG&E also filed  
13 unexecuted service agreements that it proposed for certain existing San Francisco loads previously  
14 served under the same expiring bilateral agreement, for which transmission service under PG&E's  
15 Transmission Owner Tariff was needed, but Wholesale Distribution Tariff service was unnecessary.  
16 San Francisco protested these filings, with respect to the issue of the scope of eligibility for Wholesale  
17 Distribution Tariff service as well as certain terms and conditions in the service agreements. These  
18 proceedings were consolidated in 2015, and a seven-day hearing was held before a FERC  
19 Administrative Law Judge in May 2016. The Administrative Law Judge issued an Initial Decision in  
20 November 2016, to which San Francisco, PG&E, and FERC Trial Staff filed exceptions. The  
21 Commission has yet to act on the Initial Decision, so these proceedings remain open. Once the  
22 Commission issues a final decision, the parties may request rehearing by FERC and petition for  
23 review by the Court of Appeals.

24 11. Second, there is a set of disputes regarding quarterly filings PG&E makes at FERC to  
25 identify all added, changed, or terminated San Francisco points of delivery receiving Wholesale  
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27 <sup>15</sup> See generally *City & Cty. of S.F. v. Pac. Gas & Elec. Co.*, 157 FERC ¶ 63,021, PP 1-22 (2016)  
28 (Initial Decision of FERC Administrative Law Judge describing the background of these proceedings).

1 Distribution Tariff service. San Francisco protested ten of these filings in 2017 and 2018. The  
2 protests identify certain technical errors and allege that PG&E has failed to comply with the Federal  
3 Power Act and its Wholesale Distribution Tariff in its treatment of particular points of delivery and in  
4 its practices in responding to San Francisco's requests for service. These cases were set for trial-type  
5 evidentiary hearing, but FERC has held the hearings in abeyance pending settlement discussions. In  
6 December 2018, San Francisco and PG&E filed a Joint Offer of Partial Settlement with FERC that  
7 addresses some of the issues raised in San Francisco's protests.<sup>16</sup> Six of the proceedings would be  
8 entirely resolved by FERC's approval of the partial settlement, while four of the proceedings would  
9 still have outstanding issues. FERC has yet to act on the settlement. FERC may adopt or reject the  
10 settlement or request additional briefing from the parties. For the four cases that will have unresolved  
11 issues even if the settlement is adopted, San Francisco expects FERC to lift the abeyance of active  
12 litigation and trial-type hearing procedures, if not barred by the automatic stay.

13 12. Third, on January 28, 2019, San Francisco filed a complaint against PG&E pursuant to  
14 Sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. §§ 824e, 825e, 825h.<sup>17</sup> In its  
15 Complaint, San Francisco alleges that PG&E has denied service to San Francisco in violation of the  
16 terms of its Wholesale Distribution Tariff and that PG&E is violating the Federal Power Act by  
17 implementing its Wholesale Distribution Tariff in a manner that is unjust, unreasonable, and unduly  
18 discriminatory.<sup>18</sup> This complaint is primarily focused on PG&E's refusal to provide the City with  
19 Wholesale Distribution Tariff service at secondary voltage levels as required by the terms and  
20 conditions of its Wholesale Distribution Service Tariff. The complaint alleges that PG&E has used,  
21 and continues to use, its position as the administrator of its open access tariff to disadvantage its  
22 competitor, the City, by denying service it is required to provide under the tariff and by imposing on  
23 the City, and no other customer, interconnection requirements that are not in the tariff and serve no  
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25 <sup>16</sup> Pac. Gas & Elec. Co., Joint Offer of Partial Settlement, *Pac. Gas & Elec. Co.*, FERC Docket No.  
26 ER17-910-001 (Dec. 14, 2018), eLibrary No. 20181214-5000.

27 <sup>17</sup> City & Cty. of S.F., Complaint, *City & Cty. of S.F. v. Pac. Gas & Elec. Co.*, FERC Docket  
28 No. EL19-38-000 (Jan. 28, 2019), eLibrary No. 20190128-5207, attached hereto as Exhibit B.

<sup>18</sup> *Id.* at 1.



1 legitimate purpose.<sup>19</sup> The complaint alleges that these additional requirements improperly delay  
2 service to the City, increase the City's costs to serve its customers, and in some cases have caused the  
3 City to lose customers to PG&E.<sup>20</sup>

4 13. The complaint alleges that PG&E's actions are inconsistent with the tariff, the Federal  
5 Power Act, and FERC decisions,<sup>21</sup> and asks FERC to order PG&E to provide service as offered by its  
6 tariff. Secondly, the complaint seeks refunds of excess costs incurred by the City as a result of  
7 PG&E's non-tariff requirements.<sup>22</sup>

8 14. In prior cases, FERC has determined that it has exclusive jurisdiction to interpret the  
9 filed rate and calculate the amount of the refund, but has deferred to the bankruptcy court on the issue  
10 of whether, and to what extent, a refund should be paid.<sup>23</sup>

11 15. PG&E did not answer San Francisco's January 28, 2019 complaint, but instead filed a  
12 notice on February 19, 2019, asserting that the complaint was stayed under section 362(a) of the  
13 Bankruptcy Code.<sup>24</sup>

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19 <sup>19</sup> *Id.* at 2-5. See additional discussion of these impacts on the City in the Declaration of Barbara Hale  
20 in support of the City's Motion for Determination that the Automatic Stay Does Not Apply Under  
§ 362(b)(4), or in the alternative, for Relief from the Automatic Stay Under § 362(d)(1).

21 <sup>20</sup> Complaint at 10-20.

22 <sup>21</sup> *Id.* at 20-33.

23 <sup>22</sup> *Id.* at 36-37.

24 <sup>23</sup> *Midwest Generation, LLC*, 157 FERC ¶ 61,016, PP 13-14 (2016) (determining refund obligation of  
25 Midwest Generation under the Federal Power Act, but deferring to bankruptcy proceedings whether  
those refunds can be recovered from reorganized entity); *Niagara Mohawk Power Corp.*, 77 FERC  
26 ¶ 61,224, at 61,900 (1996) (asserting "exclusive jurisdiction over establishing the rates, terms and  
27 conditions of the interconnection agreement" at issue, but adding that "whether Niagara Mohawk  
ultimately will be permitted to collect . . . any monies ordered by the Commission is a matter for the  
bankruptcy court to decide") (internal citation omitted).

28 <sup>24</sup> A copy of PG&E's Notice of Bankruptcy Filing and Imposition of Automatic Stay is attached  
hereto as Exhibit C.

1 I declare under penalty of perjury under the laws of the United States of America that  
2 the foregoing is true and correct. Executed on April 17, 2019.  
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5 /s/ Katharine M. Mapes  
6 Katharine M. Mapes  
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